GPN-J.332-ARCHB-8.94-1310500-ALA4 Spl-H.C.A.S.C.D.79e

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4877 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.)

Court's or Judge's orders

Mr. N.V. Bandiwadekar for Petitioner.

Mrs. S.S. Bhende, A.G.P. for Respondnet Nos. 1 and 2.

Mr. R.V. More for Respondent No. 3.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : FEBRUARY 07, 2005

P.C.

. Rule. By consent heard forthwith.

. In the departmental proceedings initiated against petitioner, petitioner was found guilty of misconduct alleged. Consequently, punishment of compulsory retirement was imposed on him. The Petitioner being aggrieved, preferred an appeal to the appellate authority. The Appellate authority found in favour of the Petitioner in so far as order of compulsory

retirement is concerned. Consequently set aside the order of compulsory retirement and in lieu imposed punishment of (1) that the period of absence be treated as leave due and admissible and (2) that the petitioner should loose his seniority and should be brought down and pay fixed accordingly.

. The Zilla Parishad based on that, passed an order which amongst other was to treat the petitioner's appointment as if a was fresh appointment and place him at the beginning of the time scale in the post and also brig down his seniority based on the so date of fresh appointment.

. It is clear from the Maharashtra Zilla Parishad and Panchayat Samiti (Discipline and Appeal) Rules more specifically Rule 4 that the punishments that could be imposed are set out in Rule 4 including reduction to the Lower service grade or to lower time scale or to lower stage in the time scale or withholding of increments or promotion. In the instant case the petitioner was a direct recruit. It is in that context that the punishment can be imposed. It appears that the Respondent No. 2 did not

correctly address himself to the punishment to be imposed and Respondent No. 3 and to that extent has wrongly interpreted the order of Respondent No. 2 as otherwise it would have been possible to read the order of Respondent No. 2 of bringing the petitioner to lower stage in the time scale namely at the beginning the scale. We find that there are certain other observations which could not have been made. Seniority could never have been lowered even if punishment had to be imposed as the Petitioner holds the same post once the order of compulsory retirement was set aside. In the light of the above, the following order :

. The impugned order of Respondent NO. 2 and the consequential order of Respondent No. 3 are set aside. The matter is remanded back to the Respondent No. 2 to impose penalty as contemplated by Rule 4 after giving both the parties hearing. It is made clear that in the instant case once the appellate authority came to the conclusion that punishment of compulsory retirement is disproportionate to the misconduct alleged and proved, the punishment imposed could have been other

than that of removal from service in the form of either dismissal, removal or like punishment.

. The second respondent to dispose of the matter at any rate within four months from today.

. P.A. to issue authenticated copy of this order.

(F.I.REBELLO,J.)

(S.P.KUKDAY,J.)